IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 25 of 1985

For Approval and Signature:

Hon'ble MR.JUSTICE AKSHAY H.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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GORDHANBHAI V KOLI

Versus

STATE OF GUJ

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Appearance:

1. Criminal Appeal No. 25 of 1985

MS JYOTSNA K PATEL with MR VIJAY H PATEL for Appellant

MR KC SHAH, APP for Respondent No. 1

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CORAM : MR.JUSTICE AKSHAY H.MEHTA

Date of decision: 07/03/2002

ORAL JUDGEMENT

1. Appellant is the accused of Sessions Case No. 24/1984 of the Court of the Ld. Addl. Sessions Judge,

Bhavnagar. Vide this appeal u/S. 374 (2) of the Code of Criminal Procedure (for short 'Cr.P.C.') he has challenged the judgment and order of conviction and sentence passed by the Ld. trial Judge whereby he has been convicted u/S. 307 of the Indian Penal Code (for short 'IPC') and has been sentenced to suffer RI for four years and to pay fine of Rs.500/-, in default RI for one month.

2. According to the prosecution, appellant as well as the complainant were working in the diamond cutting factory of one Ramanbhai Savajibhai in the month of November 1983. Both of them were working in that factory for over five years. The incident took place on 25/11/1983. On the day previous to the day of incident, complainant had a cough and he was coughing in the presence of the appellant. Appellant took the said coughing as a challenge and he told the complainant that he should not cough in his presence and he thereafter started giving abuses to the complainant. With a view to prevent the incident taking ugly turn, other workers intervened and they pacified the appellant. All of them thereafter had tea together and celebrated the settlement. However, next day while the complainant was working on his hand mill for polishing the diamonds, appellant came there and he delivered three blows on the head of the complainant with hammer. The complainant started bleeding. He, with a view to save him from further attack, bit the complainant on his chest. The other co-workers who were present there, intervened and they separated the appellant and the complainant. Since the complainant was bleeding from the head injury, one Amarshibhai working in the said factory, burnt cotton and he tried to plug the injury with burnt cotton with a view to stop the bleeding. Since bleeding did not stop, complainant was taken to his house on bicycle by one Ranchhodbhai Kalubhai. They were immediately followed by one Khodabhai, who in the company of the complainant's mother, took the injured complainant to hospital at Bhavnagar in a rickshaw. The injured was kept in the hospital at Bhavnagar for two and half days and thereafter he was referred to the Civil Hospital at Ahmedabad. At Ahmedabad the complainant was hospitalized for 9 days for treatment. At Bhavnagar hospital, same evening police came to know about the incident and they recorded complaint of the complainant. At Ahmedabad the complainant was discharged from the hospital after his indoor treatment was over.

2.1. The police on receiving the complaint, commenced investigation and on completion of the same, submitted

chargesheet in the Court of the Ld. Judicial Magistrate First Class at Bhavnagar, who committed the case to the Court of Sessions as offence u/S. 307 of the IPC is exclusively triable by the Court of Sessions.

3. At the trial, the Ld. Addl. Sessions Judge, Bhavnagar framed charge against the appellant for offence u/S. 307 of the IPC at Exh. 2 on 15/6/1984. The appellant denied the charge and he claimed to be tried.

3.1. During the trial, the prosecution examined 10 witnesses and also relied on certain documentary evidence in support of its case. At the end of the recording of the evidence, the Ld. trial Judge put all the incriminating circumstances appearing against the appellant in evidence to him with a view to enable him to render explanation, if he so desired. The appellant's only defence was that on the day of the incident while he was sitting, he and complainant started grappling and complainant fell down on the hand mill and thereafter he bit the appellant and again both of them fell on the hand mill.

4. The Ld. trial Judge, at the end of the trial, came to the conclusion that the prosecution had proved beyond reasonable doubt offence against the appellant u/S. 307 of the IPC and he, therefore, vide judgment dated 19/12/1984 convicted him for the said offence and passed sentence already referred to above.

5. Mr. K.C. Shah, Ld. APP appearing on behalf of the respondent - State has submitted that looking to the nature of evidence on record, the prosecution has proved beyond reasonable doubt that the appellant had on the day of the incident assaulted complainant with hammer with an intention to commit his murder. However, due to timely medical assistance, life of the complainant was saved. The appellant had thereby committed offence u/S. 307 of the IPC. Lastly he has submitted that since there is no merit in the appeal, the appeal deserves to be dismissed. The Record and Proceedings of the case are here. I have gone through the entire record of the case including the testimony of the prosecution witnesses with a view to reappreciate the same.

6. The prosecution with a view to establish the fact that complainant had received serious injuries on his head during the incident at the hands of the appellant, has examined Dr. Bharatbhai Pranshankar Bhatt, P.W. 1 Exh. 13. On 25/11/1983 he was working as Medical Officer at Bhavnagar hospital and at about 5.10 p.m. the

complainant was brought to him in injured condition. During treatment he had noticed three injuries sustained by the complainant on head. They were as follows :-

(i) C.L.W. on left frontal region 1.1/2" x 1/2" x bone deep, fresh.
(ii) C.L.W. on right side of forehead 1" x 1/2" x 1/2", fresh
(iii) C.L.W. on right frontal region 1" x 1" x bone deep, fresh.

The witness has further stated that the X-ray of patient's head was taken, which showed that there was depressed fracture of right parietal bone. In his opinion, such a fracture could be caused by the hammer used by the appellant. He has further opined that injury no. 3 was sufficient in ordinary course of nature to cause death, if no timely treatment was given. In the cross-examination he has further stated that on 28/11/1983 the patient was referred to Neuro Surgery Department in Civil Hospital at Ahmedabad. In the cross-examination this witness has stated that on receiving such injuries a person would not be rendered unconscious. He has further stated that on 25/11/1983 at about 8.45 p.m. he had also examined Gordhan Valajibhai i.e. present appellant and during examination he had noticed one injury on the right side of the chest, which was round in shape and red in colour and had teeth marks over it. He has denied the suggestion put by the defence that the injuries could be caused with one blow. He has further stated that a person who has received such injuries, even after his treatment he is likely to have some adverse effect on his memory or his hearing and he may also develop effect of epilepsy. He has denied the suggestion of the defence that by one fall such injuries could be caused.

6.1. Second witness examined by the prosecution on this aspect is Dr. Kamleshbhai Shantilal Shah P.W. 10 Exh. 31. This witness was working as Medical Officer at Ahmedabad Civil Hospital on 29/11/1983 and on that day in the morning at about 10.40 he had examined the complainant and had found the following injuries :-

(i) A stitched wound over right eye, size 1" long.
(ii) A stitched wound over near mid line, size 1"
(iii) A stitched wound over near midline, size 1.1/2" in length.

Though this witness has been cross-examined by the defence, nothing has been brought out which would

discredit the case of the prosecution. He has further in the cross-examination admitted that if there is depressed fracture, the injury could prove fatal.

7. Considering the aforesaid evidence of two Medical Officers, it clearly appears that complainant had received serious injuries on his head and injury no. 3 was sufficient in ordinary course of nature to cause death unless some timely assistance of medical expert was given. The evidence of Dr. Kamleshbhai also shows that injury suffered by the complainant and in particular injury no. 3 could prove to be fatal. It is, therefore, evident that the injuries suffered by the complainant could have caused his death, but for the timely medical treatment received by him.

8. With a view to establish that it was the appellant who had caused these injuries to the complainant, the prosecution has examined firstly the complainant himself as P.W. 2 at Exh. 18. The complainant has stated in his evidence that he was working on the hand mill for polishing diamond in the diamond factory of one Ramanbhai. The appellant was also working in that factory for the last 4 to 5 years from the day of incident. He has further stated that on previous day he had coughed in the presence of the appellant, who took it to be a challenge to him and, therefore, he started abusing the complainant and started telling why he coughed in his presence. However, the co-workers intervened and a settlement was brought about on a cup of tea. The witness has further stated that next day at about 4.00 O'clock in the evening while he was working, the appellant came there and delivered three blows on his head with the aid of hammer and on receiving the blows he started bleeding. He has also stated that to save himself from further attack, he bit the appellant on his chest. The workers who were present there, rescued the complainant from receiving further beating. The witness has also stated that Amarshibhai tried to stop bleeding by putting the ash of burnt cotton in the wound. This, however, did not stop the bleeding and, therefore, one Ranchhodbhai took him to his house on cycle. He has further stated that one Khodabhai and his mother took him to the hospital at Bhavnagar in a rickshaw where he was admitted as an indoor patient and he was treated by the doctors in the hospital for two and half days. He was thereafter sent to Civil Hospital at Ahmedabad for further treatment where he was admitted as indoor patient for 9 days. The witness has stated that at Bhavnagar hospital the police had recorded his complaint and had taken his thumb impression on the same.

In the cross-examination he has stated that he knew all the workers working in the factory by name. He has further stated that he was admitted in the hospital at about 4.30 to 5.00 p.m. and the doctor had stitched his wounds and the police had arrived at 5.30 in the evening at the hospital to record his complaint. He has, however, stated that at what time the complaint was recorded he did not remember. He has also stated in the cross-examination that what part of the chest he had bitten the appellant he did not know. He has denied the suggestion made by the defence that there was scuffle between the two during which he fell on the hand mill which was in motion at that time and that was the reason for his receiving injuries. He has also denied that it was not true that he had not stated the fact regarding he having bitten the appellant on his chest in the complaint. He has also denied that after he received the blow on the head, he had fallen down on the hand mill and he immediately became unconscious. He has also denied the suggestion that because he and the appellant had strained relations he had filed false case against him.

8.1. Ranchhodbhai Kalubhai P.W. 3 Exh. 20 is also an eye witness and he has stated in his evidence that on the day of incident while the complainant was working on his hand mill, the appellant at about 4 to 5 p.m. came near the complainant and delivered three blows with hammer on his head. The complainant with a view to defend himself had bitten the appellant on his chest. He has further stated that Amarshibhai tried to stop the bleeding by applying burnt cotton ash on the wound. Since it did not stop, he took the complainant to his house on bicycle. He has further stated that he alongwith Khodabhai and Kanajibhai's mother had gone to the hospital. In the cross-examination nothing much has been put to him which would render the case of the prosecution doubtful. On the contrary, evidence of this witness clearly shows that complainant had bitten the appellant on his chest and had torn the shirt of the appellant. He has, however, denied the suggestion that after receiving the injuries the complainant had fallen down. He has, however, admitted that complainant had fallen down after he received the injuries, but he thereafter stood up and bit the appellant.

8.2. Kiritbhai Pratapsinh P.W. 4 Exh. 21 has not supported the prosecution and, therefore, he was declared hostile by the prosecution. Hence, his evidence is not required to be discussed. This witness, however, gives support to the version of the complainant and Ranchhodbhai that at the time of incident the complainant

was bleeding and Ranchhodbhai tried to apply ash of the burnt cotton to prevent further bleeding.

8.3. Amarshibhai Mulajibhai P.W. 5 Exh. 22 is also an eye witness and he has deposed on the same line in examination in chief. In the cross-examination, however, no material is coming forth to discredit the evidence of this witness.

8.4. Similarly Rameshbhai Premajibhai P.W. 6 Exh. 23 has been examined as an eye witness. His evidence is clearly repetition of prosecution case and nothing has been brought out to discredit evidence of this witness. The prosecution has also examined certain other witnesses to support its case. But since their evidence does not take the case of the prosecution any further, the same is not discussed here in detail. The evidence of those witnesses merely gives support to the evidence of witnesses whose evidence has already been discussed in detail in this judgment.

9. Considering the aforesaid evidence of the eye witnesses, there is no reason for me not to accept the story given by the prosecution witnesses with regard to injuries having been received by the complainant in the incident which took place on 25/11/1984. The defence has not been able to dislodge the evidence of these witnesses and, therefore, there is no hesitation for me to hold that it was the appellant who had caused these injuries to the complainant without any rhime or reason. Evidence of eye witnesses is fully corroborated by the medical evidence concerning both, the complainant as well as the appellant. I, therefore, entirely agree with the finding given by the trial Court on this count.

10. Looking to the weapon used by the appellant and the part of the body chosen for inflicting the injuries and the injuries actually suffered by the complainant, it can safely be said that the appellant had no other intention but to cause death of the complainant. It is a matter of good fortune that due to timely medical help, life of the complainant could be saved. According to the medical evidence, injury no. 3 was sufficient enough to cause the death of a person. Since the appellant has not succeeded in committing murder of the complainant, it can safely be concluded that he has committed offence u/S. 307 of the IPC. On this count the finding given by the trial Court appears to be just and proper and there is no necessity to disturb the same.

11. Since more than 18 years have passed from the day

on which the incident took place, no useful purpose will be served by sending the appellant, who has most of the time remained on bail, to jail. I am also told at the bar that the appellant had remained in prison for about four days. However, considering the fact that by now the appellant must have settled down in his life and it will not be desirable to send him to the prison. I, therefore, hold that the ends of justice would meet if the appellant is convicted for offence u/S. 307 of the IPC and he is sentenced to suffer imprisonment already undergone and to pay fine of Rs.5,000/- over and above the fine imposed by the trial Court. The appellant is directed to pay additional fine on or before 30th April, 2002. In the event of payment of fine by the appellant, the trial Court is directed to pay Rs.5,000/- [Rupees five thousand only] to the original complainant by way of compensation after ascertaining his proper identity. The appeal on merits, therefore, fails and it is dismissed with aforesaid modification in the sentence.

Muddamal articles to be disposed of in terms of the direction given by the Ld. trial Judge in the impugned judgment.

[ AKSHAY H. MEHTA, J.]

* Pansala.